

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

09/30/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2002-007951

FILED: _____

SPORTS SOUTHWEST INC

WILLIAM W HOLDER

v.

WILLIAM NASRALLA

FREDERICK F STANNARD

REMAND DESK CV-CCC
SCOTTSDALE JUSTICE COURT

MINUTE ENTRY

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the Memoranda submitted.

On January 9, 2001, Appellee (Sports southwest Inc.) filed a small claims complaint against Appellant (Nasralla) in an effort to collect \$2000 for placing appellant's ad in Appellee's magazine. Appellant claims that the running of the ad for the first issue was free (a promotion), and that they did not authorize anyone to run a subsequent ad. Appellee claims they had authorization to run Appellant's subsequent ad and should therefore be paid. Appellant moved to have the case transferred to the Civil Division on May 18, 2001. The trial was held in

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the Scottsdale Justice Court on March 4, 2002. The lower court awarded the \$2000 judgment to the plaintiff, plus \$2000 in attorney's fees and \$90 in costs (with 10% interest until paid). Appellant now brings the matter before this court.

The first issue is whether the Appellee showed, by a preponderance of the evidence, that there was a valid contract between the parties and that the contract had been breached. This is a matter concerning the sufficiency of evidence. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.¹

All evidence will be viewed in a light most favorable to sustaining a judgment and all reasonable inferences will be resolved against the Appellant.² If conflicts in evidence exist, the appellate court must resolve such conflicts in favor of sustaining the judgment and against the Appellant.³

An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.⁴ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.⁵ The Arizona Supreme Court has explained in State v. Tison⁶ that "substantial evidence" means:

¹ State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert. denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, 608 P.2d 299 (1980); Hollis v. Industrial Commission, 94 Ariz. 113, 382 P.2d 226 (1963).

² Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert. denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

³ Guerra, supra; State v. Girdler, 138 Ariz. 482, 675 P.2d 1301 (1983), cert. denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

⁴ In re: Estate of Shumway, 197 Ariz. 57, 3 P.3d 977, review granted in part, opinion vacated in part 9 P.3d 1062; Ryder v. Leach, 3 Ariz. 129, 77P. 490 (1889).

⁵ Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

⁶ SUPRA.

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More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.⁷

After a careful examination of the record, I find that substantial evidence exists to support the action of the lower court.

The second issue is whether Appellee had a right to recover on its complaint, given the fact that copies of the two magazine issues were not admitted as evidence due to failure to disclose. These exhibits were not necessary.

The third issue is whether the lower court erred in failing to grant a directed verdict dismissing Appellee's complaint because Appellee failed to make a claim upon which relief could be granted. The lower court properly denied Appellant's motion for a directed verdict, for the court properly found evidence that Appellant agreed to pay \$2000 for the subsequent ad.

The fourth issue is whether the lower court erred in admitting, over objection, an Arizona Corporation Commission document regarding trade names because the document had not been properly disclosed. Appellee correctly argues that the lower court properly admitted this document, as is was part of Appellee's January 2, 2002 reply in support of its motion for summary judgment. Thus, the document was properly disclosed for it was already part of the record.

The final issue is whether the lower court erred in granting judgment for Appellee based on ads run in the January/February issue when Appellee's complaint sought payment

⁷ Id. at 553, 633 P.2d at 362.
Docket Code 019

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for an ad that ran in the November/December issue. Appellant undoubtedly understood that a mistake was made in Appellee's pro-per complaint, as is evidenced by the note from Sheila Lilly (Appendix 4 of Appellant's memorandum). Therefore, to allow Appellant to escape judgment based on a pro-per pleading mistake, which both parties understood to be an error, would be to undermine the very notion of justice. In fact, the specific date is not material to the contract.

IT IS THEREFORE ORDERED affirming the judgment of the Scottsdale Justice Court.

IT IS FURTHER ORDERED remanding this matter back to the Scottsdale Justice Court for all further, if any, and future proceedings.